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No. 85-684

IN THE

Supreme Court of the United States

OCTOBER TERM, 1985

IN THE MATTER OF JUDITH KRAMER,

Petitioner,

v.

BOARD OF EDUCATION OF THE TOWN OF BOONTON

and

PUBLIC EMPLOYMENT RELATIONS COMMISSION,

Respondents.

On Petition For A Writ Of Certiorari To The Supreme Court Of New Jersey

SUPPLEMENTAL BRIEF

NELSON R. KIEFF
8001 Braddock Road, Suite 600
Springfield, Virginia 22160
(703) 321-8510
Counsel of Record for Petitioner

JEFFRY A. MINTZ
Mesirov, Gelman, Jaffe,
Cramer and Jamieson
900 Kings Highway, North
Cherry Hill, New Jersey 08034
(609) 667-9695

November 4, 1985

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ADDITIONAL REASON FOR GRANTING THE WRIT

One Day After the Filing of the Instant Petition the U.S. Court of Appeals for the Fourth Circuit Decided the Case of *Beck v. Communications Workers of America*. In *Beck* the Court Held That the First Amendment to the Constitution of the United States Interdicts Governmental Authority to a Union to Compel Employees to Finance the Union's "Labor Legislation" Activities. That Holding Is in Direct Conflict With the Holding of the Supreme Court of New Jersey in the Case at Bar and With the Holding of the U.S. Court of Appeals for the Third Circuit in the *Robinson* Case.

On October 23, 1985 Petitioner, Judith Kramer, filed the instant petition. On October 24, 1985 the U.S. Court of Appeals for the Fourth Circuit decided the case of *Beck v. Communications Workers of America*, No. 83-1955. In her petition Mrs. Kramer contended that, by sanctioning compulsory financing of union lobbying activities, the decision below was in direct conflict with the decision in *Abood v. Detroit Bd. of Education*, 431 U.S. 209 (1977). *See* Petition at 12. In *Beck* the court followed *Abood* to hold that government may not constitutionally compel employees to finance union "labor legislation" activities. *Beck* at 30, 35-36, 46-47, 57-58. That holding brings the Fourth Circuit into direct conflict with the decision of the U.S. Court of Appeals for the Third Circuit in *Robinson v. New Jersey*, 741 F.2d 598 (1984) and with the decision below. The obvious split in the circuits on this vital issue of First Amendment concern presents an additional compelling reason for granting the petition and occasions the filing of this supplemental brief in accordance with Supreme Court Rule 22.6.

In *Beck* the Communications Workers of America appealed a district court ruling which held that the Constitution required that the agency shop authorization in the National Labor Relations Act, 29 U.S.C. § 158(a)(3), be construed to preclude collection of monies to subsidize "labor legislation" expenditures of the union. In affirming the district court, the court of appeals looked to this Court's "agency shop" decisions. It found that in *IAM v. Street*, 367 U.S. 740 (1963), this Court denied unions the power to use compulsory fees to "'support candidates for public office' or to 'advance political programs' because those were not uses which help 'defray

the expenses of the negotiation or administration of collective agreements, or the expenses entailed in the adjustment of grievances and disputes.'" *Beck* at 26-27, quoting *Street* at 768. It recognized that this Court recently reiterated that a union could not, "consistently with the Constitution", collect compulsory fees for such ends unrelated to the legislative purpose to require the employees of a bargaining unit to share the exclusive representative's costs in negotiating and administering an agreement. *Beck* at 26-30, citing *Ellis v. Railway Clerks*, 104 S. Ct. 1883 (1984).

The court of appeals looked also at *Abood* where the state statute "allowed the union enjoying the rights under an agency contract to collect dues which could be used for lobbying or political purposes." *Beck* at 45-46. Because Michigan law permitted expenditures under the agency shop agreement for legislative lobbying, "the Supreme Court invalidated on First Amendment grounds the Michigan statutory authorization for the use of fees collected from an objecting employee for such purposes." *Beck* at 30, citing *Abood* at 215, 235-36. On the other hand, it found that this Court approved the statutory authorization to require reimbursement of union expenditures "'for the purposes of collective bargaining, contract administration, and grievance adjustment.'" *Beck* at 30, quoting *Abood* at 225-26.

Thus, the court of appeals concluded that

> [A] "service charge" may be collected to such extent as it is used to finance "expenditures by the union for the purposes of collective bargaining, contract administration, and grievance adjustment" but not for political or lobbying purposes.

Beck at 46, quoting *Abood* at 222, 225-26. In disallowing as a matter of law the entire category of "labor legislative expenditures" the court of appeals noted,

> In *Robinson v. New Jersey*, 741 F.2d 598 (3d Cir. 1984), the court appears to have sustained "lobbying" expenditures by public employees because of the unique relationship of public employees' working conditions, wages, etc. to legislation. It is not easy to reconcile this decision with *Abood*.

Beck at 58 n.31. The Fourth Circuit recognized this Court's "significant statement" that

> "The differences between public and private-sector collective bargaining simply do not translate into differences in First Amendment rights."

Beck at 46-47, quoting *Abood* at 232.

The decision below does "translate into differences in" First Amendment rights to be free of governmental compulsion to advance union political causes. As a result of that decision petitioner has been, and is being, forced to subsidize the legislative activities of a union. That is not only abhorrent to her conscience, but contrary to the precedents of this Court and the Court of Appeals for the Fourth Circuit. Petitioner has a legitimate grievance which requires a remedy. Her grievance and the great public interest in protecting the First Amendment warrant this Court granting her Petition for a Writ of Certiorari.

Respectfully submitted,

NELSON R. KIEFF
8001 Braddock Road, Suite 600
Springfield, Virginia 22160
(703) 321-8510

Counsel of Record for Petitioner

JEFFRY A. MINTZ
Mesirov, Gelman, Jaffe,
Cramer and Jamieson
900 Kings Highway, North
Cherry Hill, New Jersey 08034
(609) 667-9695